

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
TCR Sports Broadcasting Holding, L.L.P.	)	
d/b/a Mid-Atlantic Sports Network,	)	MB Docket No. 08-214
Complainant	)	
v.	)	
Comcast Corporation,	)	File No. CSR-8001-P
Defendant	)	
	)	

To: Marlene H. Dortch, Secretary

Attn: Hon. Richard L. Sippel  
Chief Administrative Law Judge

**OPPOSITION OF FOX CABLE NETWORK SERVICES, LLC TO  
EXPEDITED MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

Fox Cable Network Services, LLC ("Fox"), by and through its attorneys, pursuant to 47 C.F.R. §§ 1.294 and 1.325, respectfully submits its opposition to the Expedited Motion to Compel Production of Documents filed as part of this proceeding by TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network ("MASN").<sup>1</sup>

Fox is an interested party in this proceeding because in its *Motion*, MASN seeks to compel Comcast Corporation ("Comcast") to produce certain programming contracts that Comcast has entered into with regional sports networks ("RSNs") owned by Fox. Each of these agreements is protected by confidentiality and non-disclosure provisions that are specifically designed to guard against the disclosure of Fox's highly sensitive and proprietary business

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<sup>1</sup> See *In re TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network, Complainant, v. Comcast Corporation, Defendant*, Expedited Motion to Compel Production of Documents, MB Docket No. 08-214, File No. CSR-8001-P (filed Feb. 24, 2009) (the "*Motion*").

information. Disclosure of the material terms of these agreements would be profoundly harmful to Fox – and potentially to cable television consumers as well. Fox is particularly concerned that if Comcast is compelled to turn over programming agreements for Fox-owned RSNs, MASN, a direct competitor to Fox’s RSNs, would have access to some of Fox’s most sensitive business information.

Fox is aware that this Tribunal issued an order on February 25, 2009 directing Comcast to produce, by 3 p.m. February 26, 2009, “[a]ll affiliate agreements, contracts, and related documents for Comcast’s Carriage of regional sports networks (both affiliated and unaffiliated) in the last ten years . . . .”<sup>2</sup> Fox asks that, in light of its opposition to the *Motion*, and for the reasons set forth herein, the Tribunal set aside or modify the *Order* at least with respect to agreements relating to Fox-owned RSNs.

*Disclosure of Confidential Information Would Have Anticompetitive Consequences*

At the outset, Fox desires to make clear that it takes no position with regard to the merits of the underlying dispute between Comcast and MASN. Fox is merely concerned that its business could be collaterally damaged by the production of documents containing its confidential information.

Programming agreements contain terms and provisions that go to the very heart of a programmer’s business, and the inadvertent or intentional disclosure of this information could have a devastating effect on competition. Indeed, it is hard to fathom documents that are more competitively-sensitive to a programmer than its carriage contracts. The material terms and provisions of these contracts are established only after intensive bargaining based on a variety of

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<sup>2</sup> See *In re TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network, Complainant, v. Comcast Corporation, Defendant*, Order, FCC 09M-19 (rel. Feb. 25, 2009) (the “*Order*”).

factors and attributes unique to every negotiation. If a competitor gains access to Fox's proprietary information, particularly the price that Fox charges for its services, Fox would face a significant competitive disadvantage.

The concern is acute in the context of RSNs, which compete vigorously with one another for access to a limited pool of professional and major college sports programming rights valued by consumers. But the potential harm is especially critical when – as here – the competing RSN is owned by professional sports teams.<sup>3</sup> If MASN were to gain access to Fox's confidential information, it would be able to glean strategic insights into Fox's RSN business, potentially enabling it to undermine Fox in future negotiations for programming rights with sports teams, leagues or conferences or in bargaining with cable systems for carriage of its programming networks. MASN's owners also would have an incentive to drive up the cost of acquiring sports programming. The harms would ultimately redound to consumers, who would face higher cable rates in the event that Fox's or others' RSNs are forced to pay more to obtain the rights to valuable sports programming.

Given the highly-sensitive nature of the terms contained in these contracts, this Tribunal should refuse MASN's demand for the production of all of Fox's RSN programming agreements. At the very least, the Tribunal should significantly limit the scope of MASN's request to ensure that Comcast is not compelled to produce any agreements beyond those directly relevant to MASN's claims in this proceeding.

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<sup>3</sup> MASN is jointly owned by two Major League Baseball teams, the Baltimore Orioles and the Washington Nationals.

MASN's Document Request is Overly Broad and Seeks Information Irrelevant to this Proceeding

The *Motion*, by seeking access to *every* agreement that Comcast has entered into with *every* RSN *nationwide* for a period going back 10 years, is grossly overbroad. In seeking the production of such a vast trove of documents, MASN really is engaging in a fishing expedition for its competitors' confidential business information. Fox respectfully requests that, at the very least, this Tribunal reject the *Motion* (and modify the *Order* accordingly) with respect to the vast majority of the Fox/Comcast agreements sought by MASN, which can hardly be considered relevant to this proceeding.

Specifically, MASN operates in the mid-Atlantic region of the United States. Fox owns only two RSNs that overlap with any of MASN's service area: SportSouth and FS South. Notwithstanding the geographic proximity, Fox does not believe that MASN's programming is comparable even to these two programming services. Carriage terms for Fox RSNs are shaped by many different factors, including the number of teams the RSN offers, the number of games for each team and the popularity of the team(s) within the RSN's geographic footprint, resulting in contract terms for one RSN that may be materially different from another RSN, even where both RSNs are owned and operated by the same entity. Between them, SportSouth and FS South provide viewers with regular coverage of the games of four major professional sports teams (including Major League Baseball, the National Basketball Association and the National Hockey League) as well as basketball games from two of the region's most competitive college conferences. In addition, SportSouth and FS South offer viewers national content distributed as part of their affiliation with Fox Sports Net. MASN's limited coverage of two professional baseball teams simply is not comparable.

Regardless, even if this Tribunal determines that geographic proximity renders SportSouth and FS South competitors to MASN, and thus potentially relevant to this proceeding, there can be no similar finding with respect to Fox's 13 other RSNs located across the country in markets where MASN has no presence whatsoever – all of which ostensibly would be covered by MASN's request in the *Motion*. Whatever agreement Fox may reach with a cable system in Tucson, Arizona or Houston, Texas, for example, cannot possibly inform the Tribunal with regard to the dispute between MASN and Comcast on the other side of the country. Among other things, each of these other communities is characterized by its own unique mix of characteristics – from the number of local sports teams licensing rights to coverage of games to the number of competitors vying for those rights (and carriage on cable systems) to myriad other market-dependent economic factors. The substantial differentiation between the mid-Atlantic region and each of these other locales indicates that program agreements for Fox's other RSNs would be of no value to MASN as points for comparison in this proceeding.<sup>4</sup>

Likewise, there is no valid basis for MASN – a network that initiated service in 2006 – to demand access to programming agreements entered into in 1999. Again, the variety of differentiating factors, not least the radically changing economic climate of recent years, makes it difficult to see how older agreements possibly could be relevant to MASN in this proceeding.

In short, given the potential competitive harms, this Tribunal should not countenance MASN's wide-ranging fishing expedition. Instead, if it is to permit MASN to gain access to Fox's confidential information at all, the Tribunal should at the least limit MASN's right to compel production of agreements only to those Fox RSNs that actually compete in

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<sup>4</sup> MASN could hardly claim to be similarly situated with FS Southwest, for example, which provides coverage of the Houston Rockets, Houston Astros, Texas Rangers, Dallas Mavericks, Dallas Stars and Big-12 conference football and basketball games.

MASN's markets and to agreements entered into since MASN's formation in 2006. Furthermore, information that is not relevant to the fair market value of the service should be redacted prior to the disclosure of the agreements.

*If Confidential Information is Subjected to Compelled Disclosure,  
Its Security Should Be a Paramount Concern*

Finally, in the event that Comcast is required to turn over any of its agreements with Fox as part of this proceeding, the Tribunal should take extra precautions to ensure the confidentiality of this highly-sensitive information. In particular, the Tribunal should revise the protective order governing this proceeding to limit access to Fox's agreements only to MASN's outside counsel (and only to those that otherwise comply with the terms of the *Protective Order*).<sup>5</sup> The risk of harm from disclosure of confidential information, described above, is not entirely mitigated by limiting access to outside counsel, but the potential anticompetitive impact would be far greater if MASN's in-house counsel or its outside experts or consultants were to obtain access.<sup>6</sup>

Thus, in the event that Comcast is required to turn over any of its agreements with Fox, the Tribunal should revise the *Protective Order* to prohibit any outside counsel or expert that has access to such agreements from working for any party in connection with any agreement for the distribution of a Fox RSN by a multichannel video programming distributor or in connection with the acquisition of any programming or distribution rights by a Fox RSN. This

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<sup>5</sup> See *In re TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network, Complainant, v. Comcast Corporation, Defendant*, Joint Protective Order, MB Docket No. 08-214, File No. CSR-8001-P (rel. Feb. 18, 2009) (the "*Protective Order*").

<sup>6</sup> Among other things, the *Protective Order* itself merely precludes outside consultants and experts from using information gained in this proceeding in other negotiations against Comcast; that is not reassuring to Fox, which is certain to encounter one of these consultants (who would have intimate knowledge of Fox's confidential business information) aiding another cable operator or team in a negotiation with Fox or another RSN competing for valuable rights with Fox. See *id.* at ¶ 8(e).

prohibition should be effective until one year after the expiration of any Fox agreement that is disclosed in this proceeding or February 13, 2010, whichever is later, and the prohibition should extend to the negotiation of new carriage agreements and renewals and amendments to existing agreements with Fox.

While the *Protective Order* reminds all parties of the potential consequences of violating the limitations on use of confidential information,<sup>7</sup> the stark reality is that, if information about Fox's agreements falls into the hands of a competitor, the harm would be irreversible. Even if the Commission were to impose a sanction *ex post facto*, it likely could never mitigate the damage to Fox's business. Accordingly, given the potential harms, it would be both reasonable and prudent for this Tribunal to limit access to Fox's confidential information.

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<sup>7</sup> See *id.* at ¶ 15.

For all of the reasons set forth herein, Fox respectfully requests that this Tribunal deny MASN's *Motion* insofar as it seeks information about Fox's confidential and proprietary agreements, and that it expeditiously modify its *Order* and the *Protective Order* to the extent necessary to ensure that Fox is not harmed as the result of a proceeding to which it is not even a party (and in which it has not been accused of any wrongdoing).

Respectfully submitted,

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February 26, 2009

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## CERTIFICATE OF SERVICE

I, Gregory Jones, hereby certify that, on February 26, 2009, copies of the foregoing document were served via electronic mail on the following:

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